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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,326	10/31/2003	Edward A. Colombo	EAC-605	9822

46488 7590 07/31/2006

JOHN M. HAMMOND
PATENT INNOVATIONS LLC
150 LUCIUS GORDON DRIVE
SUITE 205
WEST HENRIETTA, NY 14586

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,326

Applicant(s)

COLOMBO, EDWARD A.

Examiner

Eugene Lhymn

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/11/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7-14, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohrer (US 2003/0168451 A1) in view of Hollenbeck (US 4394906).
With respect to claim 1, Bohrer discloses a food container with a top and bottom, being made of transparent polystyrene [0007] and a bottom made of an opaque polystyrene [0007], but fails to teach the bottom being foam. Nonetheless, Hollenbeck teaches that a food container made of polystyrene foam so as to provide shock absorption.
Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the bottom of Bohrer to be made of polystyrene foam as taught by Hollenbeck so as to provide shock absorption.

With respect to claim 2, Bohrer discloses a first flap (lower portion of 16).

With respect to claim 3, Bohrer discloses a second flap, wherein the first and second flaps are joined together (upper portion of 16).

With respect to claims 4, Bohrer discloses the first and second flaps being joined via adhesive [0009].

With respect to claim 7, Bohrer discloses the bottom being dish-shaped.

With respect to claim 8, Bohrer discloses the top being dish-shaped.

With respect to claim 9, Bohrer discloses the top being substantially planar 22.

With respect to claims 10 and 12, Bohrer discloses the claimed invention except for the container being at least 80 weight percent polystyrene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container at least 80 weight percent polystyrene since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claims 11 & 14, Bohrer discloses the container being made entirely from polystyrene [0007].

With respect to claim 13, Bohrer discloses the top being made from a material other than polystyrene [0034].

With respect to claims 17 & 18, Bohrer discloses the top and bottom having lips, as shown in Fig. 2.

With respect to claim 19, Bohrer discloses the container being nestable, wherein as shown in Fig. 2, they are clearly capable of being nested within each other, wherein there is no structure prohibiting such a configuration.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohrer in view of Hollenbeck as applied to claim 1 above, and further in view of Wind (US 3937389). With respect to claim 6, Bohrer as modified above discloses the claimed invention except for the hinge being heat sealed. However, Wind teaches a food container wherein the parts are joined via heat sealing (Col. 4, Lines 1-5), thereby

providing a secure and alternate engagement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to heat seal the hinge of Bohrer as taught by Wind so as to provide a secure engagement.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohrer in view of Hollenbeck as applied to claim 1 above, and further in view of Connors et al. Bohrer as modified above discloses the claimed invention except for the hinge being ultrasonically welded. However, Connors et al. teaches a container being ultra-sonically welded (Col. 5, Lines 53-54), thus providing a secure hinge. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to ultra-sonically weld the hinge of Bohrer as taught by Connors et al. so as to provide a secure hinge.

5. Claims 15 & 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Bohrer in view of Hollenbeck as applied to claim 1 above, and further in view of Warburton (US 5046659). With respect to claims 15 & 16, Bohrer as modified above, discloses the claimed invention except for the bottom having a latch hole and the top having a latch tab, respectively. However, Warburton teaches a food container latching structure wherein the top has a tab and the bottom has a hole (Fig. 1), thus providing a secure engagement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the latch of Bohrer to have a tab and hole as taught by Warburton so as to provide a secure engagement.

Response to Arguments

6. Applicant's arguments filed 5/11/06 with respect to the rejection(s) of claim(s) 1-19 under U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bohrer and Hollenbeck.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Castellano
Primary Examiner